

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
Petition for Declaratory Ruling in Response)	WC Docket No. 19-44
to Primary Jurisdiction Referral, Autauga)	
County Emergency Management)	
Communication District et al. v. BellSouth)	
Telecommunications, LLC, No. 2:15-cv-)	
00765-SGC (N.D. Ala.))	

REPLY COMMENTS OF THE NATIONAL EMERGENCY NUMBER ASSOCIATION

In these brief Reply Comments, NENA wishes to offer its perspectives on various commenters' submissions as well as express our concern that the preemption sought by BellSouth Telecommunications, LLC ("BellSouth") and commenters supporting its petition ("Telecom Commenters") would upend numerous 9-1-1 fee collection regimes across the country, forcing states and localities across the country into a storm of litigation over 9-1-1 fees collected under (and even prior to) the sudden new regulatory environment.

I. Granting BellSouth's petition to would drastically change the definition of interconnected Voice-over-IP (IVoIP) and substantially alter the 9-1-1 fees collected by states, as well as their ability to collect those fees.

BellSouth and the Telecom Commenters contend that, in order for a service to be defined as IVoIP, it must meet the four definitional prongs of IVoIP enumerated in 47 CFR §9.3 and be identified as IVoIP in its order documentation to the customer.¹ As the Madison County,

¹ See e.g. BellSouth Petition at 20, ("A provider's choice to fulfill a customer's order for a TDM voice service such as PRI by *using* IP to transmit the voice service over the last-mile facility does not cause that PRI service to *require* either the IP-compatible CPE or broadband connection that is used only as a result of that provider's unilateral decision.")

Alabama Emergency Communications District writes, customer order forms rarely include details of the transmission or delivery method and are almost always drafted by the service provider.² This gives the provider power to arbitrarily and unilaterally decide which of two nearly indistinguishable services would best suit its bottom line, allowing providers to further obfuscate the nature of their services. The result is an exacerbated version of the cat-and-mouse game of 9-1-1 fee collection enforcement already played by many providers in cash-strapped states.

BellSouth challenges a status quo that has been in place for more than a decade.³ Should the Commission grant its petition, it would upend nearly 15 years' worth of fee collection policies in many states, opening the door for endless litigation as each of the parties scrambles to argue whether their service is newly defined as IVoIP, based only on a reading of the customer service documentation. While NENA acknowledges the complexities of the regulatory environment surrounding IVoIP as it relates to 9-1-1 service and fee collection, we encourage the Commission to, at a very minimum, carefully consider the impacts to the 9-1-1 community — including not only 9-1-1 authorities but also their providers — in considering the Telecom Commenters' request. Were the Commission even to consider such an order, it absolutely should not be made in haste, such as in response to petition at hand.

² Madison County Comments at 8.

³ See Madison County Comments at 5.

II. Commenters' assertions that 9-1-1 authorities are irresponsible with their funds and/or pursue 9-1-1 fees in bad faith is misinformed.

Contrary to claims that the Commission “must seriously question the motivations underlying the dispute”⁴ between the Alabama Districts and BellSouth, the Commission should ask itself why authorities like the Alabama Districts have been put in the position that they *must* hire a third party to enforce the fees to which they are legally entitled. The Commission should also consider that the vendors in question have a history of underbilling 9-1-1 fees and ignoring jurisdictional distinctions while collecting those fees. Further, the proposal supported by these commenters — a definition of IVoIP that creates further disruption and confusion among 9-1-1 authorities — would likely *increase* the necessity of such dreaded “Tax Bounty Hunters” and similar Telecom Commenter boogeymen.

Lastly, NENA wishes to address accusations by Windstream that denying BellSouth’s Petition would somehow increase 9-1-1 fee diversion, citing the “apparent motivations” of plaintiff jurisdictions.⁵ To be clear, NENA vehemently opposes any diversion of 9-1-1 fees for non-9-1-1 uses. However, NENA believes the red herring argument proffered by Windstream is not only irrelevant to the issue at hand, but also demonstrates its lack of familiarity with the nature of 9-1-1 funding (e.g., that 9-1-1 authorities have little influence over the practices of the state governments that fund them). It is simply inappropriate to suggest that a 9-1-1 authority’s right to collect fees in accordance with the law should not be protected based on the assumption that they are going to be forced to divert the funds anyway. Rather, Windstream should join the

⁴ USTelecom Comments at 2.

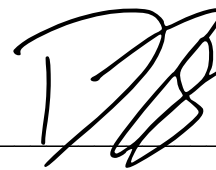
⁵ Windstream comments at 6.

rest of the 9-1-1 community, including the Commission itself,⁶ in condemning the practice of 9-1-1 fee diversion and any political entity that perpetuates it.

III. Conclusion

In closing, NENA reiterates its concern that the preemption sought by BellSouth would place state 9-1-1 fee collection in a dangerous and uncertain position and would ultimately endanger public safety. We thank the Commission for this opportunity to comment, and welcome any further inquiries.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D. Henry', written over a horizontal line.

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⁶ E.g., *Commissioner O'Reilly Letter to Governors of NY, NJ and RI Re: 911 Fee Diversion*, April 5, 2019: "The practice of diverting 9-1-1 fees gives your states proverbial black eyes, harms public safety, and makes your states ineligible for funding to modernize your emergency call centers."